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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHELSEY WIEDENBECK, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. UNITED EDUCATION INSTITUTE, d.b.a. UEI COLLEGE, Defendant.	Case No. 15-CV-00810-CJC-JEMx *Hon. Cormac J. Carney* **CLASS ACTION** **DEFENDANT UNITED EDUCATION INSTITUTE, d.b.a. UEI COLLEGE'S ANSWER TO COMPLAINT** Complaint Filed: May 26, 2015

Defendant United Education Institute, d.b.a. UEI College ("UEI") submits the following answer and affirmative defenses to the Complaint of Plaintiff Chelsey Wiedenbeck ("Plaintiff").

1. UEI admits Plaintiff has brought this Complaint for damages based on her allegations, but otherwise denies the allegations of paragraph 1.

2. In paragraph 2, Plaintiff alleges legal conclusions about the purpose and intent of the Telephone Consumer Protection Act ("TCPA") 47 U.S.C. § 227 *et seq*., for which no response is required.

3. In paragraph 3, Plaintiff alleges legal conclusions about the purpose and intent of the TCPA for which no response is required.

4. In paragraph 4, Plaintiff alleges legal conclusions about the purpose and intent of the TCPA for which no response is required.

Jurisdiction and Venue

5. UEI denies the factual allegations and does not respond to the legal conclusions of paragraph 5.

6. UEI admits it is authorized to do business in this district and that it does business in this district, but lacks sufficient information or knowledge regarding the remaining factual allegations of paragraph 6 and on that basis denies them. UEI does not respond to the legal conclusions of paragraph 6 regarding venue.

Parties

7. UEI lacks sufficient information or knowledge regarding the factual allegations of paragraph 7 and on that basis denies them. UEI does not respond to the legal conclusions of paragraph 7 regarding whether Plaintiff is a "person" within the meaning of 41 U.S.C. § 153(3).

8. UEI admits that it is a California corporation and that its principal place of business is in Irvine, California, and it conducts business in the California and the County of San Bernardino. UEI does not respond to the legal conclusions of paragraph 8 regarding whether UEI is a "person" within the meaning of 47 U.S.C. §153 (39).

Factual Allegations

9. UEI admits that at all relevant times, it conducted business in the State of California, the County of San Bernardino, and within this judicial district.

10. UEI denies that Plaintiff never entered into a business relationship with UEI.

11. UEI lacks sufficient information or knowledge regarding the allegations of paragraph 11 and on that basis denies them.

12. UEI lacks sufficient information or knowledge regarding the allegations of paragraph 12 and on that basis denies them.

13. UEI lacks sufficient information or knowledge regarding the allegations of paragraph 13 and on that basis denies them.

14. UEI denies the factual allegations and does not respond to the legal conclusions of paragraph 14.

15. UEI denies the factual allegations and does not respond to the legal conclusions of paragraph 15.

16. UEI lacks sufficient information or knowledge regarding the allegations of paragraph 16 and on that basis denies them. UEI does not respond to the legal conclusions of paragraph 16 regarding the meaning of telephone solicitation.

17. UEI lacks sufficient information or knowledge regarding the allegations of paragraph 17 and on that basis denies them. UEI does not respond to the legal conclusions of paragraph 17 regarding the meaning of emergency purposes.

18. UEI lacks sufficient information or knowledge regarding the allegations of paragraph 18 and on that basis denies them. UEI does not respond to the legal conclusions of paragraph 18.

19. UEI denies the factual allegations and does not respond to the legal conclusions of paragraph 19.

20. UEI denies the allegations of paragraph 20.

Class Action Allegations

21. UEI admits that Plaintiff purports to bring this action on behalf of herself and a class of others allegedly similarly situated, but otherwise denies the allegations of paragraph 21.

22. UEI admits that Plaintiff purports to represent a class of individuals, but otherwise denies the allegations of paragraph 22.

23. UEI admits that Plaintiff purports to represent a class of individuals, but otherwise denies the allegations of paragraph 23.

24. UEI denies the allegations of paragraph 24.

25. UEI lacks sufficient information or knowledge and on that basis denies the allegations of paragraph 25.

26. UEI denies the allegations of paragraph 26.

27. UEI denies the factual allegations and does not respond to the legal conclusions of paragraph 27.

28. UEI denies the allegations of paragraph 28.

29. UEI denies the allegations of paragraph 29.

30. UEI lacks sufficient information or knowledge and on that basis denies the allegations of paragraph 30.

31. UEI denies the allegations of paragraph 31.

32. UEI denies the allegations of paragraph 32.

First Cause of Action

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227 et seq.

33. Though no response is required to paragraph 33, UEI incorporates its previous responses.

34. UEI denies the allegations of paragraph 34.

35. UEI denies the allegations of paragraph 35.

36. UEI denies the allegations of paragraph 36.

Second Cause of Action

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227 et seq.

37. Though no response is required to paragraph 37, UEI incorporates its previous responses.

38. UEI denies the allegations of paragraph 38.

39. UEI denies the allegations of paragraph 39.

40. UEI denies the allegations of paragraph 40.

Prayer for Relief

UEI admits that Plaintiff seeks to certify the class and requests other relief as may be just or proper, but denies that such relief should be granted.

UEI denies the factual allegations and does not respond to the legal conclusions in the first bullet point under the First Cause of Action for Negligent Violation of the TCPA, 47 U.S.C. § 227 *et seq*.

UEI denies the factual allegations and does not respond to the legal conclusions in the second bullet point under the First Cause of Action for Negligent Violation of the TCPA, 47 U.S.C. § 227 *et seq*.

UEI denies the factual allegations and does not respond to the legal conclusions in the third bullet point under the First Cause of Action for Negligent Violation of the TCPA, 47 U.S.C. § 227 *et seq*.

UEI denies the factual allegations and does not respond to the legal conclusions in the first bullet point under the Second Cause of Action for Knowing/Willful Violation of the TCPA, 47 U.S.C. § 227 *et seq*.

UEI denies the factual allegations and does not respond to the legal conclusions in the second bullet point under the Second Cause of Action for Knowing/Willful Violation of the TCPA, 47 U.S.C. § 227 *et seq*.

UEI denies the factual allegations and does not respond to the legal conclusions in the third bullet point under the Second Cause of Action for Knowing/Willful Violation of the TCPA, 47 U.S.C. § 227 *et seq.*

Trial by Jury

UEI admits that Plaintiff demands a jury trial, but does not respond to the legal conclusion that she is entitled to one.

AFFIRMATIVE DEFENSES

UEI alleges the following affirmative defenses. UEI asserts these affirmative defenses prior to discovery, to preserve its rights, and to preclude any claim of waiver. By alleging these affirmative defenses, UEI does not admit to any facts or that it has the burden of proof and/or persuasion.

FIRST AFFIRMATIVE DEFENSE

Arbitration

1. Plaintiff's claims are subject to arbitration.

SECOND AFFIRMATIVE DEFENSE

Prior Express Consent

1. Plaintiff gave prior express consent to receiving any phone calls.

THIRD AFFIRMATIVE DEFENSE

No Use Of ATDS

2. No calls were made using an “Automatic Telephone Dialing System” within the meaning of the Telephone Consumer Protection Act.

FOURTH AFFIRMATIVE DEFENSE

No Agency

3. UEI did not make the alleged phone calls. Anyone who may have made the alleged phone calls was not an employee or agent of UEI, and thus UEI cannot be liable.

FIFTH AFFIRMATIVE DEFENSE

Lack of Intent/Good Faith/Not Willful or Knowing

4. UEI did not act willfully or knowingly with respect to any violation. Instead, UEI acted in good faith and without intent to harm Plaintiff or to engage in any known wrongful act or violation of law. Any violation occurred notwithstanding the maintenance of procedures reasonably adopted to avoid wrongful acts or violations of law.

SIXTH AFFIRMATIVE DEFENSE

FCC Primary Jurisdiction

5. The Federal Communications Commission ("FCC") has primary jurisdiction regarding some or all of the issues in dispute in this matter.

SEVENTH AFFIRMATIVE DEFENSE

Jurisdiction/Venue

6. Plaintiff's claims are barred due to lack of jurisdiction and/or improper venue.

FIRST AFFIRMATIVE DEFENSE

Lack of Capacity

7. Plaintiff lacks the legal capacity to bring this complaint.

SECOND AFFIRMATIVE DEFENSE

Misjoinder of Parties

8. Plaintiff has failed to join an indispensable party, including but not limited to any alleged third party agent of UEI that might have made the alleged calls.

THIRD AFFIRMATIVE DEFENSE

Collateral Action/First-To-File Rule

9. There is another action pending between substantially the same parties that arises from the same or similar transaction.

FOURTH AFFIRMATIVE DEFENSE

Collateral Estoppel

10. There has been an adjudication between substantially the same parties regarding the same or similar issues and facts raised in the present action.

FIFTH AFFIRMATIVE DEFENSE

Res Judicata

11. There has been an adjudication between substantially the same parties of the same cause of action brought in the present action.

SIXTH AFFIRMATIVE DEFENSE

Preemption

12. Plaintiff's claims are preempted.

SEVENTH AFFIRMATIVE DEFENSE

Abstention

13. The Court should abstain from adjudicating Plaintiff's claims.

EIGHTH AFFIRMATIVE DEFENSE

Illegal

14. Plaintiff's claims are barred, in whole or in part, by law.

NINTH AFFIRMATIVE DEFENSE

Compliance with Law

15. UEI's conduct was prescribed by law and UEI complied with that law. UEI is therefore shielded from liability.

TENTH AFFIRMATIVE DEFENSE

Estoppel

16. The doctrine of estoppel bars Plaintiff from recovering.

ELEVENTH AFFIRMATIVE DEFENSE

Unclean Hands

17. The doctrine of unclean hands bars Plaintiff from recovering.

TWELFTH AFFIRMATIVE DEFENSE

Statutes of Limitation

18. Plaintiff has failed to bring her claim within the statutory time limit required by the applicable statute of limitation.

THIRTEENTH AFFIRMATIVE DEFENSE

Laches

19. Plaintiff's unreasonable delay bars Plaintiff from recovering under the doctrine of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

Waiver

20. The doctrine of waiver bars Plaintiff from recovering.

FIFTEENTH AFFIRMATIVE DEFENSE

Fault of Plaintiff

21. Plaintiff, by her own conduct, caused or contributed to her damages.

SIXTEENTH AFFIRMATIVE DEFENSE

Fault Of Third Parties

22. Third parties to this action caused or contributed to Plaintiff's damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Standing

23. Plaintiff lacks standing to bring her claim.

EIGHTEENTH AFFIRMATIVE DEFENSE

Failure to Mitigate

24. Plaintiff has failed to mitigate her damages.

NINETEENTH AFFIRMATIVE DEFENSE

No Knowing Or Willful Misconduct

25. Any conduct by UEI was not a knowing or willful violation of the TCPA.

TWENTIETH AFFIRMATIVE DEFENSE

No Proximate Cause

26. UEI did not proximately cause any damages, injury, or violation alleged in the First Amended Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

No Statutory Damages

27. Plaintiff's statutory damage claim fails to meet the requirements of the law, violates UEI's due process rights protected by the U.S. and California Constitutions, and violates the constitutional prohibition against excessive fines.

TWENTY-SECOND AFFIRMATIVE DEFENSE

No Ratification

28. UEI did not ratify or approve of any intentional, willful, malicious, fraudulent, or oppressive acts of any of its employees or agents.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Release

29. UEI has been released of some or all obligations to Plaintiff.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Privilege

30. UEI's actions were privileged, and thus shielded from liability.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Justification

31. UEI's actions were justified, and thus shielded from liability.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

No Class Action

32. Class treatment is inappropriate due to lack of commonality, typicality, and adequacy, and because a class action is not otherwise a superior method of adjudicating this dispute.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

De Minimus Harm

33. The contribution of UEI to Plaintiff's alleged harm, if any, was *de minimus*.

RESERVATION OF RIGHT TO AMEND

UEI reserves the right to amend its answer to incorporate additional affirmative defenses at a later time.

PRAYER FOR RELIEF

UEI prays for relief as follows:

1. That Plaintiff take nothing by reason of her Complaint;

2. That judgment be entered in UEI's favor;

3. That UEI be awarded its reasonable costs and, if applicable, fees; and

4. That UEI be awarded such other and further relief as this Court deems just and proper.

Dated: August 21, 2015

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By *_/s/ Mercedes A. Cook_*
SHANNON Z. PETERSEN
MERCEDES A. COOK

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